

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-248.1, 16.1-250.1, 16.1-340, 16.1-341, 19.2-174.1, 19.2-182.9, 32.1-48.02, 32.1-48.03, 32.1-48.04, 37.1-67.3 and 63.1-248.9 of the Code of Virginia, relating to civil procedure.

[S 906]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-248.1, 16.1-250.1, 16.1-340, 16.1-341, 19.2-174.1, 19.2-182.9, 32.1-48.02, 32.1-48.03, 32.1-48.04, 37.1-67.3 and 63.1-248.9 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-248.1. Criteria for detention or shelter care.

A. A juvenile taken into custody whose case is considered by a judge, intake officer or magistrate pursuant to § 16.1-247 shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody and control of such juvenile's parent, guardian, custodian or other suitable person able and willing to provide supervision and care for such juvenile, either on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2 or under such conditions as may be imposed or otherwise. However, a juvenile may be detained in a secure facility, pursuant to a detention order or warrant, only upon a finding by the judge, intake officer, or magistrate, that there is probable cause to believe that the juvenile committed the act alleged, and that at least one of the following conditions is met:

1. The juvenile is alleged to have committed an act which would be a felony or Class 1 misdemeanor if committed by an adult, and there is clear and convincing evidence that:

a. Considering the seriousness of the current offense or offenses and other pending charges, the seriousness of prior adjudicated offenses, the legal status of the juvenile and any aggravating and mitigating circumstances, the release of the juvenile, constitutes a clear and substantial threat to the person or property of others;

b. The release of the juvenile would present a clear and substantial threat of serious harm to such juvenile's life or health; or

c. The juvenile has threatened to abscond from the court's jurisdiction during the pendency of the instant proceedings or has a record of willful failure to appear at a court hearing within the immediately preceding twelve months.

2. The juvenile has absconded from a detention home or facility where he has been directed to remain by the lawful order of a judge or intake officer.

3. The juvenile is a fugitive from a jurisdiction outside the Commonwealth and subject to a verified petition or warrant, in which case such juvenile may be detained for a period not to exceed that provided for in § 16.1-323 while arrangements are made to return the juvenile to the lawful custody of a parent, guardian or other authority in another state.

4. The juvenile has failed to appear in court after having been duly served with a summons in any case in which it is alleged that the juvenile has committed a delinquent act or that the child is in need of services or is in need of supervision; however, a child alleged to be in need of services or in need of supervision may be detained for good cause pursuant to this subsection only until the next day upon which the court sits within the county or city in which the charge against the child is pending, and under no circumstances longer than seventy-two hours from the time he was taken into custody. If the seventy-two hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

When a juvenile is placed in secure detention, the detention order shall state the offense for which the juvenile is being detained, and, to the extent practicable, other pending and previous charges.

B. Any juvenile not meeting the criteria for placement in a secure facility shall be released to a parent, guardian or other person willing and able to provide supervision and care under such conditions as the judge, intake officer or magistrate may impose. However, a juvenile may be placed in shelter care if:

1. The juvenile is eligible for placement in a secure facility;

2. The juvenile has failed to adhere to the directions of the court, intake officer or magistrate while on conditional release;

3. The juvenile's parent, guardian or other person able to provide supervision cannot be reached within a reasonable time;

4. The juvenile does not consent to return home;

57 5. Neither the juvenile's parent or guardian nor any other person able to provide proper supervision
58 can arrive to assume custody within a reasonable time; or

59 6. The juvenile's parent or guardian refuses to permit the juvenile to return home and no relative or
60 other person willing and able to provide proper supervision and care can be located within a reasonable
61 time.

62 C. The criteria for continuing the juvenile in detention or shelter care as set forth in this section shall
63 govern the decisions of all persons involved in determining whether the continued detention or shelter
64 care is warranted pending court disposition. Such criteria shall be supported by clear and convincing
65 evidence in support of the decision not to release the juvenile.

66 D. Nothing in this section shall be construed to deprive the court of its power to punish a juvenile
67 summarily for contempt for acts set forth in § 18.2-456, other than acts of disobedience of the court's
68 dispositional order which are committed outside the presence of the court.

69 E. A detention order may be issued pursuant to subdivision 2 of subsection A by the committing
70 court or by the court in the jurisdiction from which the juvenile fled or where he was taken into
71 custody.

72 § 16.1-250.1. Appointment of counsel; detention review hearing.

73 When a child is not released after a detention hearing held pursuant to § 16.1-250 and, at the time of
74 the detention hearing, the child was not represented by legal counsel, then the child shall be afforded the
75 opportunity to be represented by counsel prior to a detention review hearing.

76 The court shall, upon request of counsel, rehear the matter as soon as is practicable but in no event
77 later than seventy-two hours after the request for the review hearing. *If the seventy-two hour period*
78 *expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the*
79 *seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day*
80 *on which the court is lawfully closed.* During the hearing, the court shall evaluate the need for continued
81 detention of the child.

82 Notice of the detention review hearing, either oral or written, stating the time, place and purpose of
83 the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco
84 parentis if he can be found, to the child's attorney, to the child if twelve years of age or over, and to the
85 attorney for the Commonwealth who shall be given an opportunity to be heard.

86 § 16.1-340. Emergency admission.

87 A minor may be taken into custody and admitted for inpatient treatment pursuant to the procedures
88 specified in § 37.1-67.01 or § 37.1-67.1. If the minor is admitted to a willing facility in accordance with
89 § 37.1-67.1, the temporary detention order shall be effective until such time as the juvenile and domestic
90 relations district court schedules a hearing. The juvenile and domestic relations district court shall
91 schedule a hearing pursuant to § 16.1-341 no sooner than twenty-four hours and no later than
92 seventy-two hours from the time of the issuance of the temporary detention order. If the seventy-two
93 hour period expires on a Saturday, Sunday, ~~or other~~ legal holiday *or day on which the court is lawfully*
94 *closed, the seventy-two hours shall be extended to the next day which is not a Saturday, Sunday, or*
95 *legal holiday or day on which the court is lawfully closed. In no case may the time period between the*
96 *filing of the petition and the hearing under § 16.1-344 exceed ninety-six hours.*

97 § 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

98 A. A petition for the involuntary commitment of a minor may be filed with the juvenile and
99 domestic relations district court by a parent or, if the parent is not available or is unable or unwilling to
100 file a petition, by any responsible adult. The petition shall include the name and address of the petitioner
101 and the minor and shall set forth in specific terms why the petitioner believes the minor meets the
102 criteria for involuntary commitment specified in § 16.1-345. The petition shall be taken under oath.

103 If a commitment hearing has been scheduled by a juvenile and domestic relations district judge
104 pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the
105 facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long
106 as such petition complies in substance with the provisions of this subsection.

107 B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic
108 relations district court may schedule a hearing which shall occur no sooner than twenty-four hours and
109 no later than seventy-two hours from the time the petition was filed. If the seventy-two-hour period
110 expires on a Saturday, Sunday, ~~or other~~ legal holiday *or day on which the court is lawfully closed, the*
111 *seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday or*
112 *day on which the court is lawfully closed. In no case may the time period between the filing of the*
113 *petition and the hearing under § 16.1-344 exceed ninety-six hours.*

114 If the petition is not dismissed, copies of the petition, together with a notice of the hearing, shall be
115 served immediately upon the minor and the minor's parents, if they are not petitioners. No later than
116 twenty-four hours before the hearing, the court shall appoint counsel to represent the minor, unless it has
117 determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause

118 shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the court
119 may continue the hearing once for a period not to exceed seventy-two hours.

120 § 19.2-174.1. Information required prior to admission to a mental health facility.

121 Prior to any person being placed into the custody of the Commissioner for evaluation or treatment
122 pursuant to §§ 19.2-169.2, 19.2-169.3, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, and 19.2-182.3, and
123 Article 1.1 (37.1-70.1 et seq.) of Chapter 2 of Title 37.1, the court or special justice shall provide the
124 Commissioner with the following, if available: (i) the commitment order, (ii) the names and addresses
125 for the attorney for the Commonwealth, the attorney for the person and the judge holding jurisdiction
126 over the person, (iii) a copy of the warrant or indictment, and (iv) a copy of the criminal incident
127 information as defined in § 2.1-341 or a copy of the arrest report or a summary of the facts relating to
128 the crime. The party requesting the placement into the Commissioner's custody or, in the case of
129 admissions pursuant to §§ 19.2-169.3, 19.2-169.6, 19.2-176, and 19.2-177.1, and Article 1.1 (37.1-70.1
130 et seq.) of Chapter 2 of Title 37.1, the person having custody over the defendant shall gather the above
131 information for submission to the court at the hearing. If the information is not available at the hearing,
132 it shall be provided by the party requesting placement or the person having custody directly to the
133 Commissioner within ninety-six hours of the person being placed into the Commissioner's custody. *If the*
134 *ninety-six-hour period expires on a Saturday, Sunday or legal holiday, the ninety-six hours shall be*
135 *extended to the next day that is not a Saturday, Sunday or legal holiday.*

136 § 19.2-182.9. Emergency custody of conditionally released acquittee.

137 When exigent circumstances do not permit compliance with revocation procedures set forth in
138 § 19.2-182.8, any judge as defined in § 37.1-1 or a magistrate may issue an emergency custody order,
139 upon the sworn petition of any responsible person or upon his own motion based upon probable cause
140 to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no
141 longer a proper subject for conditional release and (ii) requires inpatient hospitalization. The emergency
142 custody order shall require the acquittee within his judicial district to be taken into custody and
143 transported to a convenient location where a person designated by the community services board who is
144 skilled in the diagnosis and treatment of mental illness shall evaluate such acquittee and assess his need
145 for inpatient hospitalization. A law-enforcement officer who, based on his observation or the reliable
146 reports of others, has probable cause to believe that any acquittee on conditional release has violated the
147 conditions of his release and is no longer a proper subject for conditional release and requires
148 emergency evaluation to assess the need for inpatient hospitalization, may take the acquittee into custody
149 and transport him to an appropriate location to assess the need for hospitalization without prior judicial
150 authorization. The evaluation shall be conducted immediately. The acquittee shall remain in custody
151 until a temporary detention order is issued or until he is released, but in no event shall the period of
152 custody exceed four hours. If it appears from all evidence readily available (i) that the acquittee has
153 violated the conditions of his release or is no longer a proper subject for conditional release and (ii) that
154 he requires emergency evaluation to assess the need for inpatient hospitalization, the judge as defined in
155 § 37.1-1, or magistrate upon the advice of such person skilled in the diagnosis and treatment of mental
156 illness, may issue an order of temporary detention authorizing the executing officer to place the
157 acquittee in an appropriate institution for a period not to exceed forty-eight hours prior to a hearing. If
158 the forty-eight-hour period terminates on a Saturday, Sunday, or legal holiday *or day on which the court*
159 *is lawfully closed*, the acquittee may be detained until the next day which is not a Saturday, Sunday, or
160 legal holiday; ~~but in no event may he be detained for longer than seventy-two hours or ninety-six hours~~
161 ~~when the legal holiday occurs on a Monday or Friday. For purposes of this section, a Saturday, Sunday~~
162 ~~or legal holiday shall be deemed to include the time period up to 8 a.m. of the next day which is not a~~
163 ~~Saturday, Sunday or legal holiday or day on which the court is lawfully closed.~~

164 The committing court or any judge as defined in § 37.1-1 shall have jurisdiction to hear the matter.
165 Prior to the hearing, the acquittee shall be examined by a psychiatrist or licensed clinical psychologist,
166 provided the psychiatrist or clinical psychologist is skilled in the diagnosis of mental illness, who shall
167 certify whether the person is in need of hospitalization. At the hearing the acquittee shall be provided
168 with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance
169 of counsel in preparation for and during the hearing, and the right to introduce evidence and
170 cross-examine witnesses at the hearing. Following the hearing, if the court determines, based on a
171 preponderance of the evidence presented at the hearing, that the acquittee (i) has violated the conditions
172 of his release or is no longer a proper subject for conditional release and (ii) is mentally ill or mentally
173 retarded and is in need of inpatient hospitalization, the court shall revoke the acquittee's conditional
174 release and place him in the custody of the Commissioner. When an acquittee on conditional release
175 pursuant to this chapter is taken into emergency custody, detained or hospitalized, such action shall be
176 considered to have been taken pursuant to this section, notwithstanding the fact that his status as an
177 insanity acquittee was not known at the time of custody, detention or hospitalization. Detention or
178 hospitalization of an acquittee pursuant to provisions of law other than those applicable to insanity

179 acquittees pursuant to this chapter shall not render the detention or hospitalization invalid. If a person's
 180 status as an insanity acquittee on conditional release is not recognized at the time of emergency custody
 181 or detention, at the time his status as such is verified, the provisions applicable to such persons shall be
 182 applied and the court hearing the matter shall notify the committing court of the proceedings.

183 § 32.1-48.02. Investigations of verified reports or medical evidence; counseling; outpatient and
 184 emergency treatment orders; custody upon emergency order.

185 A. Upon receiving at least two verified reports or upon receiving medical evidence that any person
 186 who is reputed to know that he is infected with a communicable disease is engaging in at-risk behavior,
 187 the Commissioner or his designee may conduct an investigation through an examination of the records
 188 of the Department and other medical records to determine the disease status of the individual and that
 189 there is cause to believe he is engaging in at-risk behavior.

190 B. If the investigation indicates that the person has a communicable disease caused by a non-airborne
 191 microorganism and that there is cause to believe he is engaging in at-risk behavior, the Commissioner or
 192 his designee may issue an order for such person to report to the local or district health department in the
 193 jurisdiction in which he resides to receive counseling on the etiology, effects and prevention of the
 194 specific disease. The person conducting the counseling shall prepare and submit a report to the
 195 Commissioner or his designee on the counseling session or sessions in which he shall document that the
 196 person so counseled has been informed about the acts that constitute at-risk behavior, appropriate
 197 precautions, and the need to use appropriate precautions. The counselor shall also report any statements
 198 indicating the intentions or understanding of the person so counseled.

199 C. If the investigation, described in subsection A, indicates that the person has a communicable
 200 disease caused by an airborne microorganism which causes serious disease and can result in death and
 201 that the person has refused or failed to adhere to a prescribed course of treatment and, despite
 202 counseling, is engaging in conduct that places uninfected persons at risk of contracting such airborne
 203 communicable disease, the Commissioner or his designee may issue an outpatient treatment order for
 204 such person to report to the local or district health department in the jurisdiction in which he resides to
 205 receive appropriate outpatient treatment and education concerning his disease.

206 D. If the investigation, described in subsection A, indicates that the person has a communicable
 207 disease caused by an airborne microorganism which causes serious disease and can result in death and,
 208 despite documented and appropriate counseling, is engaging in conduct that unreasonably places
 209 uninfected persons at risk of contracting such airborne communicable disease and medical data
 210 demonstrate that he poses an imminent threat to the health of others, the Commissioner may issue an
 211 emergency order requiring such person to be taken immediately into custody and placed, for a period,
 212 not to exceed forty-eight hours, in the least restrictive, willing facility providing protection of the health
 213 of others and appropriate treatment to the person upon finding that at least one of the following
 214 conditions is met:

215 1. The person has refused or failed to report to the local health department after having been ordered
 216 to do so pursuant to subsection C, for appropriate outpatient treatment and education concerning his
 217 disease;

218 2. The person has a documented history of failure to adhere to a prescribed course of treatment; or

219 3. Documentation exists that the person has indicated that he will not comply with the prescribed
 220 treatment.

221 If the specified forty-eight-hour period terminates on a Saturday, Sunday or legal holiday, such
 222 person may be detained until the next day which is not a Saturday, Sunday, or legal holiday. ~~In no~~
 223 ~~event may the person be detained for longer than seventy-two hours or ninety-six hours when the~~
 224 ~~specified forty-eight-hour period terminates on a Saturday, Sunday or legal holiday. For purposes of this~~
 225 ~~subsection, a Saturday, Sunday, or legal holiday shall be deemed to include the time period up to 8:00~~
 226 ~~a.m. of the next day which is not a Saturday, Sunday, or legal holiday. During this period, the~~
 227 Commissioner shall proceed in accordance with § 32.1-48.03.

228 E. In order to implement an emergency order issued pursuant to subsection D of this section, all state
 229 and local law-enforcement officers are authorized to take custody of the subject of such emergency order
 230 immediately upon issuance of the emergency order by the Commissioner.

231 § 32.1-48.03. Petition for hearing; temporary detention.

232 A. Upon receiving a verified report or upon receiving medical evidence that any person who has
 233 been counseled pursuant to § 32.1-48.02 has continued to engage in at-risk behavior, the Commissioner
 234 or his designee may petition the general district court of the county or city in which such person resides
 235 to order the person to appear before the court to determine whether isolation is necessary to protect the
 236 public health.

237 B. If such person cannot be conveniently brought before the court, the court may issue an order of
 238 temporary detention. The officer executing the order of temporary detention shall order such person to
 239 remain confined in his home or another's residence or in some convenient and willing institution or

240 other willing place for a period not to exceed forty-eight hours prior to a hearing. An electronic device
 241 may be used to enforce such detention in the person's home or another's residence. The institution or
 242 other place of temporary detention shall not include a jail or other place of confinement for persons
 243 charged with criminal offenses.

244 If the specified forty-eight-hour period terminates on a Saturday, Sunday, ~~or~~ legal holiday *or day on*
 245 *which the court is lawfully closed*, such person may be detained until the next day which is not a
 246 Saturday, Sunday, ~~or~~ legal holiday. ~~In no event may the person be detained for longer than seventy-two~~
 247 ~~hours or ninety-six hours when the specified forty-eight-hour period terminates on a Saturday, Sunday or~~
 248 ~~legal holiday. For purposes of this section, a Saturday, Sunday, or legal holiday shall be deemed to~~
 249 ~~include the time period up to 8:00 A.M. of the next day which is not a Saturday, Sunday, or legal~~
 250 ~~holiday or day on which the court is lawfully closed.~~

251 C. Any person ordered to appear before the court pursuant to this section shall be informed of his
 252 right to be represented by counsel. The court shall provide the person with reasonable opportunity to
 253 employ counsel at his own expense, if so requested. If the person is not represented by counsel, the
 254 court shall appoint an attorney-at-law to represent him. Counsel so appointed shall be paid a fee of
 255 seventy-five dollars and his necessary expenses.

256 § 32.1-48.04. Isolation hearing; conditions; order for isolation; right to appeal.

257 A. The isolation hearing shall be held within forty-eight hours of the execution of any temporary
 258 detention order issued or, if the forty-eight-hour period terminates on a Saturday, Sunday, ~~or~~ legal
 259 holiday *or day on which the court is lawfully closed*, the isolation hearing shall be held ~~within~~
 260 ~~seventy-two or ninety-six hours of the execution of any such temporary detention order the next day that~~
 261 ~~is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.~~

262 Prior to the hearing, the court shall fully inform the person of the basis for his detention, if any, the
 263 basis upon which he may be isolated, and the right of appeal of its decision.

264 B. An order for isolation in the person's home or another's residence or an institution or other place,
 265 including a jail when no other reasonable alternative is available, may be issued upon a finding by the
 266 court that the following conditions are met:

267 1. The person is infected with a communicable disease.

268 2. The person is engaging in at-risk behavior.

269 3. The person has demonstrated an intentional disregard for the health of the public by engaging in
 270 behavior which has placed others at risk for infection.

271 4. There is no other reasonable alternative means of reducing the risk to public health.

272 C. Any order for isolation in the person's home or another's residence or an institution or other place
 273 shall be valid for no more than 120 days, or for a shorter period of time if the Commissioner or his
 274 designee, or the court upon petition, determines that the person no longer poses a substantial threat to
 275 the health of others. Orders for isolation in the person's home or another's residence may be enforced
 276 through the use of electronic devices. Orders for isolation may include additional requirements such as
 277 participation in counseling or education programs. The court may, upon finding that the person no
 278 longer poses a substantial threat to the health of others, issue an order solely for participation in
 279 counseling or educational programs.

280 D. Isolation orders shall not be renewed without affording the person all rights conferred in this
 281 article.

282 Any person under an isolation order pursuant to this section shall have the right to appeal such order
 283 to the circuit court in the jurisdiction in which he resides. Such appeal shall be filed within thirty days
 284 from the date of the order. Notwithstanding the provisions of § 19.2-241 relating to the time within
 285 which the court shall set criminal cases for trial, any appeal of an isolation order shall be given priority
 286 over all other pending matters before the court, except those matters under appeal pursuant to
 287 § 37.1-67.6, and shall be heard as soon possible by the court. The clerk of the court from which an
 288 appeal is taken shall immediately transmit the record to the clerk of the appellate court.

289 The appeal shall be heard de novo. An order continuing the isolation shall only be entered if the
 290 conditions set forth in subsection B are met at the time the appeal is heard.

291 If the person under an isolation order is not represented by counsel, the judge shall appoint an
 292 attorney-at-law to represent him. Counsel so appointed shall be paid a fee of \$150 and his necessary
 293 expenses. The order of the court from which the appeal is taken shall be defended by the attorney for
 294 the Commonwealth.

295 § 37.1-67.3. Same; involuntary admission and treatment.

296 The commitment hearing shall be held within forty-eight hours of the execution of the temporary
 297 detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified
 298 terminates on a Saturday, Sunday, or legal holiday, such person may be detained, as herein provided,
 299 until the next day which is not a Saturday, Sunday, or legal holiday; ~~but in no event may the person be~~
 300 ~~detained for a period longer than seventy-two hours or ninety-six hours when such legal holiday occurs~~

301 on a Monday or Friday. A Saturday, Sunday, or legal holiday shall be deemed to include the time
302 period up to 8:00 a.m. of the next day which is not a Saturday, Sunday, or legal holiday.

303 The judge, in commencing the commitment hearing, shall inform the person whose involuntary
304 admission is being sought of his right to apply for voluntary admission and treatment as provided for in
305 § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain
306 if such person is then willing and capable of seeking voluntary admission and treatment. If the person is
307 capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept
308 voluntary admission for a minimum period of treatment and after such minimum period, not to exceed
309 seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during
310 which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or
311 § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the
312 requirement for prescreening by a community services board or community mental health clinic as
313 provided in § 37.1-65.

314 If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the
315 judge shall inform such person of his right to a commitment hearing and right to counsel. The judge
316 shall ascertain if a person whose admission is sought is represented by counsel, and if he is not
317 represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such
318 person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to
319 employ counsel at his own expense.

320 A written explanation of the involuntary commitment process and the statutory protections associated
321 with the process shall be given to the person and its contents explained by an attorney prior to the
322 commitment hearing. The written explanation shall include, at a minimum, an explanation of the
323 person's right to retain private counsel or be represented by a court-appointed attorney, to present any
324 defenses including independent evaluation and expert testimony or the testimony of other witnesses, to
325 be present during the hearing and testify, to appeal any certification for involuntary admission to the
326 circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose
327 admission is sought has been given the written explanation required herein.

328 To the extent possible, during or before the commitment hearing, the attorney for the person whose
329 admission is sought shall interview his client, the petitioner, the examiner described below, the
330 community services board staff, and any other material witnesses. He shall also examine all relevant
331 diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise
332 actively represent his client in the proceedings. The role of the attorney shall be to represent the wishes
333 of his client, to the extent possible.

334 The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing.
335 The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing,
336 and to testify and present evidence. The petitioner shall be encouraged but shall not be required to
337 testify at the hearing and the person whose admission is sought shall not be released solely on the basis
338 of the petitioner's failure to attend or testify during the hearing.

339 Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist or
340 a psychologist who is licensed in Virginia by either the Board of Medicine or the Board of Psychology
341 who is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not
342 available, any mental health professional who is (i) licensed in Virginia through the Department of
343 Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be
344 able to provide an independent examination of the person. The examiner shall not be related by blood or
345 marriage to the person, shall not be responsible for treating the person, shall have no financial interest in
346 the admission or treatment of the person, shall have no investment interest in the hospital detaining or
347 admitting the person under this article, and, except for employees of state hospitals and of the U.S.
348 Department of Veterans Affairs, shall not be employed by such hospital. For purposes of this section,
349 investment interest means the ownership or holding of an equity or debt security, including, but not
350 limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes,
351 or other equity or debt instruments.

352 All such examinations shall be conducted in private. The judge shall summons the examiner who
353 shall certify that he has personally examined the individual and has probable cause to believe that the
354 individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or
355 (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and
356 (iii) requires or does not require involuntary hospitalization or treatment. Alternatively, the judge, in his
357 discretion, may accept written certification of the examiner's findings if the examination has been
358 personally made within the preceding five days and if there is no objection sustained to the acceptance
359 of such written certification by the person or his attorney. The judge shall not render any decision on
360 the petition until such examiner has presented his report either orally or in writing.

361 Except as otherwise provided in this section, prior to making any adjudication that such person is

362 mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from
 363 the community services board which serves the political subdivision where the person resides a
 364 prescreening report, and the board or clinic shall provide such a report within forty-eight hours or ~~within~~
 365 ~~seventy-two hours~~, if the forty-eight-hour period terminates on a Saturday, Sunday, ~~or~~ legal holiday *or*
 366 *day on which the court is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday or*
 367 *day on which the court is lawfully closed.* If it is impossible or impractical to obtain a prescreening
 368 report from the community services board which serves the political subdivision where the person
 369 resides, the judge may obtain such report from the community services board of the political subdivision
 370 where the person is located. The report shall be admissible as evidence of the facts stated therein and
 371 shall state whether the person is deemed to be so seriously mentally ill that he is substantially unable to
 372 care for himself, an imminent danger to himself or others as a result of mental illness and in need of
 373 involuntary hospitalization or treatment, whether there is no less restrictive alternative to institutional
 374 confinement and what the recommendations are for that person's care and treatment. In the case of a
 375 person sentenced and committed to the Department of Corrections and who has been examined by a
 376 psychiatrist or clinical psychologist, the judge may proceed to adjudicate whether the person is mentally
 377 ill and should be confined pursuant to this section without requesting a prescreening report from the
 378 community services board.

379 After observing the person and obtaining the necessary positive certification and any other relevant
 380 evidence which may have been offered, if the judge finds specifically (i) that the person presents an
 381 imminent danger to himself or others as a result of mental illness or has been proven to be so seriously
 382 mentally ill as to be substantially unable to care for himself, and (ii) that alternatives to involuntary
 383 confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive
 384 alternative to institutional confinement and treatment, the judge shall by written order and specific
 385 findings so certify and order that the person be placed in a hospital or other facility for a period of
 386 treatment not to exceed 180 days from the date of the court order. Such placement shall be in a hospital
 387 or other facility designated by the community services board which serves the political subdivision in
 388 which the person was examined as provided in this section. If the community services board does not
 389 provide a placement recommendation at the commitment hearing, the person shall be placed in a
 390 hospital or other facility designated by the Commissioner.

391 After observing the person and obtaining the necessary positive certification and any other relevant
 392 evidence which may have been offered, if the judge finds specifically (i) that the person presents an
 393 imminent danger to himself or others as a result of mental illness or has been proven to be so seriously
 394 mentally ill as to be substantially unable to care for himself, and (ii) that less restrictive alternatives to
 395 institutional confinement and treatment have been investigated and are deemed suitable, and if,
 396 moreover, the judge finds specifically that (i) the patient has the degree of competency necessary to
 397 understand the stipulations of his treatment, (ii) the patient expresses an interest in living in the
 398 community and agrees to abide by his treatment plan, (iii) the patient is deemed to have the capacity to
 399 comply with the treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis, and
 400 (v) the ordered treatment can be monitored by the community services board or designated providers,
 401 the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital,
 402 outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.21, or such other
 403 appropriate course of treatment as may be necessary to meet the needs of the individual. Upon failure of
 404 the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon
 405 notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a
 406 hospital. The community services board which serves the political subdivision in which the person
 407 resides shall recommend a specific course of treatment and programs for provision of such treatment.
 408 The community services board shall monitor the person's compliance with such treatment as may be
 409 ordered by the court under this section, and the person's failure to comply with involuntary outpatient
 410 treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to
 411 the provisions of this section.

412 The judge shall make or cause to be made a tape or other audio recording of the hearing and shall
 413 submit such recording to the appropriate district court clerk to be retained in a confidential file. Such
 414 recordings shall only be used to document and to answer questions concerning the judge's conduct of the
 415 hearing. These recordings shall be retained for at least three years from the date of the relevant
 416 commitment hearing. The judge shall also order that copies of the relevant medical records of such
 417 person be released to the facility or program in which he is placed upon request of the treating
 418 physician or director of the facility or program. Except as provided in this section, the court shall keep
 419 its copies of relevant medical records, reports, and court documents pertaining to the hearings provided
 420 for in this section confidential if so requested by such person, or his counsel, with access provided only
 421 upon court order for good cause shown. Such records, reports, and documents shall not be subject to the
 422 Virginia Freedom of Information Act (§ 2.1-340 et seq.). Such person shall be released at the expiration

423 of 180 days unless involuntarily committed by further petition and order of a court as provided herein or
424 such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

425 The procedures required by this section shall be followed at such commitment hearing. The judge
426 shall render a decision on such petition after the appointed examiner has presented his report, either
427 orally or in writing, and after the community services board which serves the political subdivision where
428 the person resides has presented a prescreening report, either orally or in writing, with recommendations
429 for that person's placement, care and treatment. These reports, if not contested, may constitute sufficient
430 evidence upon which the court may base its decision.

431 The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form
432 provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The copy of
433 the form and the order shall be kept confidential in a separate file and used only for the purpose of
434 conducting a firearms transaction record check authorized by § 18.2-308.2:2.

435 § 63.1-248.9. Authority to take child into custody.

436 A. A physician or protective service worker of a local department or law-enforcement official
437 investigating a report or complaint of abuse and neglect may take a child into custody for up to
438 seventy-two hours without prior approval of parents or guardians provided:

439 1. The circumstances of the child are such that continuing in his place of residence or in the care or
440 custody of the parent, guardian, custodian or other person responsible for the child's care, presents an
441 imminent danger to the child's life or health to the extent that severe or irreparable injury would be
442 likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be
443 held; and

444 2. A court order is not immediately obtainable; and

445 3. The court has set up procedures for placing such children; and

446 4. Following taking the child into custody, the parents or guardians are notified as soon as
447 practicable that he is in custody; and

448 5. A report is made to the local department; and

449 6. The court is notified and the person or agency taking custody of such child obtains, as soon as
450 possible, but in no event later than seventy-two hours, an emergency removal order pursuant to
451 § 16.1-251; however, if a preliminary removal order is issued after a hearing held in accordance with
452 § 16.1-252 within seventy-two hours of the removal of the child, an emergency removal order shall not
453 be necessary.

454 B. If the seventy-two-hour period for holding a child in custody and for obtaining a preliminary or
455 emergency removal order expires on a Saturday, *or* Sunday, ~~or other legal holiday~~, the seventy-two
456 hours shall be extended to the next day that is not a Saturday; *or* Sunday; ~~or other legal holiday~~, but in
457 no event shall either such period exceed ninety-six hours.